(2) Remarks

I. Restriction Requirement

The Examiner has required applicants to elect between:

I. Claims 1-10, said to be drawn to a method of forming a food bar, classified in class 426, subclass 297; and

II. Claims 11-17, said to be drawn to the food bar, classified in class 426, subclass 89.

Applicants elect the process claims of Group I, with traverse.

Applicants traverse the restriction requirement because, as a practical matter, there is simply no way to search the claims of any of the groups -- thoroughly -- without searching for the other.

All of the claims have "a community of properties justifying their grouping which [is] not repugnant to principles of scientific classification" *[In re Harnish,* 631 F.2d 716, 206 U.S.P.Q. 300, 305, (C.C.P.A. 1980)]. The claims of Group I all relate to "cold formed food bars containing fragile baked inclusions" as called for in the title as is, in fact claimed in claims of Group II. One group of claims cannot be examined without searching for the other.

Importantly, an applicant has a "right to define what he regards as his invention as he chooses, so long as his definition is distinct" *[ibid.].* And, "[a]s a general proposition, an applicant has a right to have each claim examined on the merits" *[In re Weber, Soden and Boksay, 580* F.2d *455,* 198 U.S.P.Q. 328, 331 (C.C.P.A. 1978)]. That court and its successor have long recognized the advantages to the public interest in permitting applicants to claim all aspects of the invention so as to encourage the making of a more detailed disclosure of all aspects of the discovery.

> We believe the constitutional purpose of the patent system is promoted by encouraging applicants to claim, and therefore to describe in the manner required by 35 U.S.C. § 112, all aspects of what they regard as their inventions, regardless of the number of statutory classes involved.

In re Kuehl, 177 U.S.P.Q. 250, 256 (C.C.P.A. 1973).

Since it is the case that the claims all relate to "cold formed food bars containing fragile baked inclusions", even though the Patent Office classification system may indicate different places to list the patents after complete examination and allowance, searching the subject matter of one classification with that of others is the only way to yield ALL references pertinent to the invention, and there is no undue burden for examination purposes.

The requirement puts form over substance, utilizing an arcane classification procedure – unlike the unity of invention standard accepted internationally -- to segment the invention disclosure into differently-classifiable parts. It must be recalled that the classification system is made for the convenience of filing and retrieving documents. It is not a fair use of the classification system to say that it is the standard by which the number of inventions is to be determined.

Requiring applicants to pay filing fees, prosecution costs, issue fees, and maintenance fees for several patents for one invention is an undue burden for applicant.

Accordingly, reconsideration and withdrawal of the requirement for restriction are believed in order and are requested.

Respectfully submitted,

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